



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Abatement Action on the  
Motion of the Department of Natural Resources to  
Cease Use of a Former Boathouse on Taylor Lake  
(Chain), Owned by Clear Water Harbor, Inc.;  
Padraic and Ann Marie Meighan located in the  
Town of Farmington, Waupaca County, Wisconsin

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Case No. DNR-14-026

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On July 2, 2014, the Department of Natural Resources (Department or DNR) filed a Request for Hearing with the Division of Hearings and Appeals. Pursuant to due notice, hearing was held at Waupaca, Wisconsin on September 29, 2014, Jeffrey D. Boldt, Administrative Law Judge presiding.

The parties requested an opportunity to file written briefs and the last was received on November 26, 2014.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Department of Natural Resources (Department or DNR), by

Attorney Megan Correll  
DNR – Legal Services  
P. O. Box 7921  
Madison, WI 53707-7921

Clear Water Harbor, Inc. (Clear Water or CWH), and Padraic Meighan by

Attorney Paul Kent  
Stafford and Rosenbaum, LLP  
P. O. Box 1784  
Madison, WI 53701-1784

### STIPULATED FINDINGS OF FACT

At the hearing the parties agreed to the following Stipulated Facts:

1. The boathouse at issue in this case was built in the early 1920s.
2. On September 14, 2011, Clear Water filed an application with the Department seeking authorization to make repairs to the boathouse.
3. On October 27, 2011, the Department issued a boathouse certification.
4. On October 27, 2011, Clear Water and the Department entered into a boathouse repair agreement for the purposes of performing repairs valued at approximately \$10,000.00.
5. The boathouse repair agreement was recorded November 3, 2011. (TR, p. 1)

### FINDINGS OF FACT

1. The Waupaca Chain of Lakes constitute a popular tourist destination for Wisconsin residents and a draw for tourists outside of the state. (Dremel 151, Ins. 2-152, ln. 6) The boathouse, along with three other adjacent boathouses, has been in place since the 1920s. (Stipulation of Facts, 1 (SOF), Ex. 106; Koehnke, 39, Ins. 10-11) Padriac Meighan is listed as the registered agent for the corporate entity Clear Water Harbor facility (CWH). CWH was registered with the Wisconsin Department of Financial Institution (WDFI), in January 1975. (Ex. 35; 241, Ins. 13-18) Since 1975, CWH leased the property and facilities it used for its restaurant and bar as well as the boathouse. (Meighan, 219, Ins. 6-9) In approximately 2000, CWH purchased the boathouse. (Meighan, 219, Ins. 6-9)

2. The CWH has been a destination location on Taylor Lake since the early 1920s. Mr. Meighan began renting the facility in 1975 and purchased the facility in 2000. (Meighan TR, p. 219) Today, the CWH facility includes a bar and restaurant, it operates an historic paddle wheel and cruise boat on Taylor Lake and it rents space to Taylor Lake Marine which includes the boathouse at issue in this proceeding. Id. Clear Water Harbor employs about 150 people during the summer months. Id. It remains a destination point today (Koehnke TR, p.18) and is considered a significant asset and meeting place for the community. (Underberg TR, p. 186)

3. The boathouse on the CWH property was originally built in the early 1920s. (Stipulation ¶1) It was one of four original boathouses on the site. One was a restaurant and dance hall; one was a canoe house with a second story apartment above it; and the last two were boathouses which housed large boats. For many years, the boathouse at issue here housed boats that were used for tours on Taylor Lake. (Meighan TR, p. 221) In 1978 and 1979, with the permission of the owner, Mr. Meighan removed three of the original four boathouses on the property and the last boathouse was converted into use as a gift shop and marina. (TR, p. 222) In 2011, Meighan sought to make structural repairs to the boathouse. (Ex. 103)

4. Prior to 2011, the boathouse was known as Chain O' Lakes Marine, and operated as a marine facility. (Ex. 2; Handrich, 88, Ins. 5-89, ln. 8; Dremel, 155, ln. 8; Justmann, 296, Ins. 2-12) A large sign on the boathouse, with lighting adornment, identified the structure as the "CHAIN O' LAKES MARINE co.", it openly advertised itself as an authorized Mercury motors dealer, and a large sign provided a map of the Waupaca Chain of Lakes as well as posting the local rules and slow no-wake requirements. (Ex. 2) A small sign on the front of the building advertised the "Sign of the Whale-nautical gifts". (Ex. 2) The wet bay garage door on the left side (as viewed from the water) appears to only function partially. (Ex. 2) The dock-side wall of the boathouse also posted local rules and information regarding the prevention of aquatic invasive species. (Ex. 6H)

5. DNR Warden Dremel testified that CWH's former marine operator Carl Nelson stored his fishing boat beneath the boathouse in the wet bay. (Dremel, 153, Ins. 18-154, ln. 11) Lay witness Handrich testified regarding the storage of jet skis in the wet bay. (Handrich, 90, ln. 15-25) CWH rented watercraft to the public from the boathouse which included, at minimum, a cash register for rental payments, keys to the boats and a rental logging binder. (Justmann, 296, ln. 2-7; Handrich, 89, Ins. 22-90, ln. 3; Dremel, 154, ln. 17-24, Underberg, 183, ln. 18-22) From the boathouse, CWH sold items associated with watercraft including, at minimum, boat lights, boat ladders, anchors, personal flotation devices (PFDs) and paddles. (Meighan 264, ln. 16-2; Justmann, 296, ln. 2-7; Handrich, 89, Ins. 23-90 ln.3; Dremel 154, Ins. 15-155, ln. 11)

6. From the 1970s until 2011, the boathouse was used in part as a gift shop (the Silver Moon and later the Sign of the Whale) and in part as a marina. (Meighan TR, p. 222) The extent of the gift shop operations was subject to some dispute. The weight of the evidence clearly demonstrated that it took up considerable amount of the boathouse floor space.

7. Exhibits 108-111 were photos of the interior of the boathouse showing a rather cluttered gift shop. Mr. Underberg, who has lived in the Chain O'Lakes area since 1978 and had visited the gift shop 75 to 100 times, testified with respect to those photos, "that is exactly how it looked ... any time during the summer." (Underberg TR, pp. 185-86) He also noted that for many years it was the only gift shop on the Chain O' Lakes to sell local souvenirs. Id at 182-83. Mr. Prust who visited the boathouse for the express purpose of assessing the business similarly testified in reference to the photos that, "yes, that's exactly what it looked like." (Prust TR, p. 278) He used Exhibit 112 showing the empty boathouse before the 2011 repairs to note the areas used by the gift shop, and stated that the foreground "was all gift shop." Id at 277. Mr. Meighan, who rented the boathouse since 1975, also reviewed Exhibit 112 as well as Exhibits 108-111 to testify as to the areas used as a gift shop. (Meighan TR, pp. 226-29) He concluded based on the photographs and his personal knowledge that "more than three-quarters" of the boathouse was used as a gift shop, and the amount of floor space had not changed over the years. (Meighan TR, pp. 223-24)

8. On September 14, 2011, CWH applied to the DNR for a certification for repair of the boathouse. (SOF, 2. Ex. 103) On October 1, 2011, Taylor Lake Marine LLC was registered as a corporate entity with WDFI. (Ex. 36) On October 27, 2011, DNR approved the boathouse repair request submitted by CWH. (SOF 3; Ex. 104) By e-mail dated November 1, 2011, the

DNR received photographs of the progress of the repair of the boathouse from Waupaca County staff. (Exs. 6-6H) Ex 6C depicts the wet bay present below the floor of the boathouse and accessible by its garage door. CWH reconstructed much of the original boathouse, including 56 pilings, the entire floor, 10 windows, a majority of the siding and 2 large glass paned lake-facing windows that elevate like typical garage doors. (Exs. 103, 7A-7) On November 4, 2011, the certification and agreement for the boathouse was filed with the Waupaca County register of deeds as required in the agreement to be completed prior to construction. (SOF 4, Ex. 105)

9. In approximately early June, 2012, DNR Water Management Specialist (WMS) Koehnke received the first complaint regarding the new use of the former boathouse structure as the Rental Hall. (Koehnke, 38, 1n. 1-6) One of the neighbors closely adjacent to the Rental Hall, Dave Podgrantz, e-mailed Koehnke a copy of an announcement provided by the newly formed Taylor Lake Marine (TLM) announcing its "new marina." (Ex. 8) The same announcement provided information about the new role of the former boathouse that, "will be used as a private rental space for events, meetings, and other gatherings." (Ex. 8) CWH posted new signage indicating separate facilities for "Marina/Rentals" on the one hand and "Boat House-Private Party Hall" on the other hand. (Ex. 9A) Throughout 2012 and into 2013, Koehnke received multiple complaints from neighbors, business owners and the state assessor's office. (Koehnke, 57, 1n. 10-25) On July 31, 2012, DNR Warden Kernosky investigated the complainants' allegations by visiting the Rental Hall as a plain clothed member of the public. (Ex. 10; Kernosky, 143, Ins. 10-145, In. 9) On the same day of her visit, Warden Kernosky documented her present tense recollection of her visit to the Rental Hall in a Case Activity report. (Kernosky, 57, 1n. 10-25) CWH suggested that Kernosky view its Facebook pages to see what events look like in the Rental Hall. (Ex. 10)

10. CWH's website advertises the Rental Hall as "a great option for any type of event!" and provides photographs of the Rental Hall set up for private events parties, the menu for private parties, beverage information for private parties, and venue rates for renting out the Rental Hall. (Exs. 11-15; Ex. 18) CWH's Facebook page reveals more photographs of events held in the Rental Hall. (Exs. 17 A-B; Ex. 27 A-W) CWH has advertised the Rental Hall on numerous websites, including taylorlakemarine.com, waupacamemories.com, tretchingwaters.com, fitalternativeswellness.com, yelp.com, as well as in a bridal directory. (Exs. 21-26) CWH hired a professional photographer, Ty Helbach Photography, to advertise the Rental Hall on the internet. (Exs. 20A-B)

11. CWH operated a legitimate boathouse for over 35 years until 2011 when it sought DNR approval to completely reconstruct its structure. Undisputed evidence in the record established that members of the public rented watercraft from CWH through payments made in the boathouse. (Justmann, 296, Ins. 2-7; Handrich, 89, Ins. 22-90, In. 3; Dremel, 154, Ins. 17-24, Underberg, 183, Ins. 18-22) Undisputed evidence in the record established that members of the public purchased from CWH goods associated with navigation and located in the boathouse. (Meighan 264, Ins. 16-2; Justmann, 296, Ins. 2-7; Handrich, 89, Ins. 23-90, In. 3; Dremel 154, Ins. 155-155, In. 11) Both parties agree that the rental activity and the sales of goods related to navigation constitute retail sales and direct sales to public consumers. Private use does not necessarily dictate a violation of the public's interest in navigable waters so long as the use supports navigation. *City of Milwaukee v. State*, 193 Wis. 423, 214 N.W. 820 (1927). The

boathouse-CWH's retail business for over 35 years was open to the public and served the interests of the public in navigation and enjoyment of the navigable waters.

12. In sharp contrast to its pre-2012 use, CWH's Rental Hall no longer caters to the public's recreational navigation activities. Taylor Lake Marine has taken over that role and is not operated from the boathouse. CWH has privatized the use of the Rental Hall. CWH now prevents the general public from entering the Rental Hall without renting it for hundreds of dollars. Prior to 2012, the public, while enjoying a day on Taylor Lake, could have entered the boathouse and, if desired, purchased a retail good or rented a watercraft. The Rental Hall supports no public navigational purpose, and is instead an unlawful private appropriation of public water for private parties.

13. As evidenced by the complaints to the DNR, the use of the boathouse as a party rental facility has a detrimental impact upon the quiet enjoyment of public waters by neighboring riparians and other users of Taylor Lake. At hearing, Mr. Justmann was asked what kind of music was played during rental parties at the boathouse. He replied, "Loud. I don't know. A lot of hip hop . . . I will say that it can be louder than the music at the Harbor bar." (TR, p. 302) Further, when operated as a marina, the boathouse activity of renting boats and the gift shop ended around 6:00 p.m. Now "the building is being used until 10:00 at night," with bright lights that he considered "somewhat of an invasion of privacy." (TR, p. 300)

14. DNR reached out to CWH, attempting to resolve this dispute short of an enforcement action. (Exs. 28, 30, 33) Two meetings were held but the parties could not resolve this dispute.

15. CWH refused to stop conducting unlawful party rentals in the boathouse structure on public waters.

16. A boathouse must be used for the storage of watercraft and associated materials during the boating season to have the navigational purposes that are consistent with the longstanding Wisconsin water law requirement that structures on public waters, including boathouses, be placed solely by riparians and for their navigational purposes. (Koehnke, TR, pp. 74-75) Placing boats in the boathouse during the winter months does not serve any navigational purpose during the boating season.

17. The Orders set forth below are necessary to protect and preserve the public interest in public waters, including the preventing public waters being appropriated by private entities for non-navigational purposes in violation of Chapter 30 and the public trust doctrine, and the rights of users of Taylor Lake to quiet enjoyment of these waters.

## DISCUSSION

This is an unfortunate case but not a close one. The boathouse is clearly a structure placed upon public waters and such structures are permissible when used for the storage of watercraft or other incidents of navigation. A party hall for wedding receptions and other private

parties is not an incident of navigation. The DNR gave CWH the proverbial inch and they demanded a mile. The boathouse facility began renting and storing boats, with at first a small but then larger gift shop, and over time started having loud private wedding receptions on the public waters of Taylor Lake Chain. CWH simply took it too far in undertaking uses beyond navigation and has ended up with a banquet facility that obviously does not meet the definition of a boathouse.

The fact that CWH received a permit to reconstruct and improve the boathouse in a manner that was consistent with the legislature's fifty percent rule has no bearing on whether the *uses* of the facility are consistent with those of the legal definition of a boathouse. Further, it is not enough to store a few boats in the facility in winter to come within both the legal and dictionary definition of a boathouse. A boathouse must be used for the storage of watercraft and associated materials during the boating season to have the navigational purposes that are consistent with the longstanding Wisconsin water law requirement that structures on public waters, including boathouses, be placed solely by riparians and for navigational purposes. The Department provided the undisputed expert testimony of Mr. Koehnke and others on this point, but it is also a matter of common sense. A banquet hall for weddings is simply not a boathouse, and is entirely unrelated to the navigational purposes at the heart of a boathouse's essential function. Unlike the former public marina which operated from the boathouse, in conjunction with the gift shop, the party rental hall serves no navigational purpose. Rather than providing a benefit to users of Taylor Lake by providing public access to public waters, the party rental facility appropriates the public waters for a private non-navigational purpose that noisily disrupts the quiet enjoyment of those waters by both public users of Taylor Lake and neighboring riparians.

Finally, in fairness to members of the public who unknowingly booked weddings or other important life milestone events at Clear Water's unlawful facility, the Order below allows any wedding currently on the calendar as of that date to proceed during the 2015 season ending October 31, 2015. After that, the loud private parties on public waters must end.

Clear Water must restore the boathouse to its lawful purpose or deal with the consequences of not doing so from further enforcement actions.

## CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and enter necessary Orders in cases referred to it by the Department of Natural Resources pursuant to Chapter 30, and Wis. Stat. § 227.43(1)(b).

2. Wisconsin Stat. § 30.03(4)(a), provides that if the Department learns of a possible violation of the statutes relating to navigable waters or a possible infringement of the statutes relating to navigable waters, and the department determines that the public interest may not be adequately served by imposition of a penalty or forfeitures, the department may order a hearing concerning the possible violation or infringement and ask the hearing examiner to issue an order

directing the responsible parties to perform or refrain from performing acts in order to fully protect the interests of the public in the navigable waters.

3. The current use of the “boathouse” structure does not meet the definition of a boathouse as defined in Wis. Stat. § 30.01(1d) (“ ‘boathouse’ means a structure used for the storage of watercraft and associated materials which has one or more walls or sides”); see also, Wis. Admin. Code § NR 325.03(2); it should be considered a miscellaneous structure lacking authorization under Wis. Stat. § 30.12(3m).

4. The current use of the Boathouse privatizes public resources for non-navigational uses in violation of Chapter 30 and in violation of the public interest in navigable waters. The current use of the boathouse for loud parties interferes with the rights of neighboring riparians and other users of Taylor Lake to quiet enjoyment of those waters.

### ORDER

WHEREFORE, IT IS HEREBY ORDERED, that Clear Water Harbor, Inc. and Padraic and Anne Marie Meighan cease and desist scheduling further party rental facility events including but not limited to wedding receptions immediately.

IT IS FURTHER ORDERED, that a list of all currently scheduled wedding events be conveyed to the area Water Management Specialist (WMS) within ten days of this Order. Any wedding currently on the calendar as of that date shall be allowed to proceed during the 2015 season ending October 31, 2105. No further events shall be scheduled without the approval of the WMS.

Dated at Madison, Wisconsin on February 20, 2015.

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By: \_\_\_\_\_  
Jeffrey D. Boldt  
Administrative Law Judge

### NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent and shall be served upon the Secretary of the Department either personally or by certified mail at: 101 South Webster Street, P. O. Box 7921, Madison, WI 53707-7921. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.